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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,487	05/24/2001	James W. O'Toole JR.	CIS00-3138	2984

7590

08/10/2005

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EXAMINER

LE, HIEU C

ART UNIT

PAPER NUMBER

2142

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,487

Applicant(s)

O'TOOLE ET AL.

Examiner

Hieu c. Le

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,9,10,12-14 and 18-23 is/are rejected.
- 7) ☒ Claim(s) 2,6-8,11,15-17,23-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3-2-05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Applicant's argument filed 3/2/05 have been fully considered but they moot with new ground for rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,4-5,10,13-14,19-22 are rejected under 35 .S.C. 103(a) as being unpatentable Lipa et al. [US.Pat.No. 6,061,722] and in view of Gifford et al. (US. Patent. 6,052,718).

As to claim 1, Lipa discloses a method for managing a network of nodes, the steps comprising:

requesting an initial set of network metrics for an initial subset of nodes in the network of nodes based on a connecting node attempting to establish a relationship with a target node of the initial subset, each network metric of the initial set associated with a respective node from the initial subset [front end 123 of a user request connection to lobby list server 102, a list of zone rating information for the quality of network connections (an initial set of network metrics) for zones (an initial set of nodes) based on a user (connecting node) attempting to access a server (target node) in one of the zones listed in the list of zones, the metrics are latency, bandwidth (col. 6, line 56-col. 7, line 27)] and measuring a performance aspect of the respective node relative to the network (col. 7, lines 1-28), receiving the initial set of the network

metrics for the initial subset of nodes (col. 7, lines 38-42) and establishing the relationship between the connecting node and the target node of the initial subset based on a comparison of the network metrics in the initial set (col. 7, lines 51-67).

Lipa does not explicitly disclose, prior to the step of requesting the initial set of network metrics, selecting a network metric metric from at least one of a bottle neck bandwidth metric, a latency metric, and a hop count metric.

Gifford discloses a network replica system that represents a set of network nodes (Fig. 1) . A list of routing tables are received by the client computer and derives from the routing tables the expected performance to all of the network information listed in the routing tables (col. 4, lines 38-46). The information includes the number of network hops, it requires to reach a distant network (col. 4, lines 65-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Gifford's teachings to modify the method of Lipa by prior to the step of requesting the initial set of network metrics, selecting a network metric of a hop count metric in order to determine certain characteristics of the client internetwork environment and aid the routing process.

As to claim 4, Lipa further discloses wherein the step of receiving the initial set of network metrics comprises measuring a set of interactions over the network between the connecting node and the target node and between the connecting node and each node from the initial subset of the nodes [measuring latency (set of interactions) over the network (col. 7, lines 1-47)].

As to claim 5, Lipa further discloses wherein the step of receiving the initial

set of network metrics comprises measuring a set of bottleneck bandwidth metrics between each node of the initial subset and a root node of the network of nodes. (col. 9, lines 1-5)].

As to claim 10, refer to claim 1 rejection. Lipa further discloses a computer system for managing a network of nodes, the computer system comprising:

a memory (Fig. 1, item 122);

a network interface in communication with the memory ; and

a processor in communication with the memory and the network interface,

wherein the memory is encoded with logic instructions for a network manager application (col. 3, lines 48-58).

As to claim 13, refer to claim 4 rejection.

As to claim 14, refer to claim 5 rejection.

As to claim 19, Lipa further discloses wherein the computer system is the connecting node (Fig. 1).

As to claim 20, refer to claim 1 rejection. Lipa further discloses a computer program product (Fig. 1).

As to claim 21, refer to claim 1 rejection.

As to claim 22, refer to claim 1 rejection. Gifford further discloses logical links between the nodes (virtual links) (Fig. 1).

4. Claims 9,18 are rejected under 35 U.S.C. 103(a) as being unpatentable Lipa et al. [US.Pat.No. 6,061,722] in view of Gifford (US. Patent. 6,052,718) and as applied to claims 1& 10 above and further in view of Fujiwara et al. (US. Patent. 5,471,580).

As to claim 9, neither Lipa nor Gifford discloses wherein the connecting node does not have a previous relationship to the network prior to the step of requesting the initial set of network metrics, and the initial subset of nodes comprises a root node of the network of nodes.

Fujiwara discloses a hierarchical management network wherein some nodes are selected from each of a plurality of the basic networks as gate nodes that constitute an upper level (root node) of the hierarchical network (col. 5, lines 45-51). The source node (connecting node) can be a node in the same network or a different network (i.e. no prior relationship to the network) (col. 11, lines 20-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Fujiwara's teachings to modify the method of Lipa and Gifford by connecting a node does not have a previous relationship to network and the initial subset of nodes comprises a root node of the network nodes in order to transfer data between nodes belonging to the same lower lawyer network while a gate node (root node) connected to an upper lawyer network is used to transfer data there through to nodes belonging to another network (col. 4, lines 8-16).

As to claim 18, refer to claim 9 rejection.

Allowable Subject Matter

5. Claims 2, 6-8, 11, 15-17, 23-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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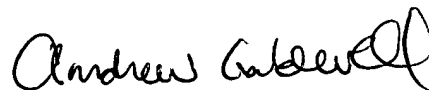
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Le whose telephone number is (571) 272-3897.

The examiner can normally be reached on Monday to Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Caldwell Andrew, can be reached on (571) 272-3868. The fax phone number for this Group is (571)-273-3897.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 273-8300.

Hieu Le

A handwritten signature in black ink, appearing to read "Andrew Caldwell", with a stylized flourish at the end.

**ANDREW CALDWELL
SUPERVISORY PATENT EXAMINER**